UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 05-CV-10879-JLT

KIMBERLY GENEREUX, Plaintiff	)	
v.	)	**PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION *IN LIMINE* TO EXCLUDE THE TESTIMONY OF DR. DAVID CHAPIN**
COLUMBIA SUSSEX CORPORATION, STARWOOD HOTELS & RESORTS WORLDWIDE, INC., and WESTIN HOTEL MANAGEMENT, L.P., Defendants	)	

Kimberly Genereux, the plaintiff, opposes the defendants' motion *in limine* to exclude the testimony of David S. Chapin, M.D., for the following reasons:

1. David S. Chapin, M.D. is Ms. Genereux' treating physician, not an expert retained by the plaintiff for purposes of testifying in this action.

2. Dr. Chapin first examined Ms. Genereux on February 22, 2008, at the request of another of Ms. Genereux' treating physicians, Rosaline Barron, M.D.

3. Ms. Genereux first consulted Dr. Barron on February 14, 2008, for problems arising from incomplete rectal emptying, which Ms. Genereux did not know were related to the rape which gives rise to the instant action.

4. Radiographic testing conducted at Dr. Barron's request on February 14, 2008, discovered for the first time that Ms. Genereux was suffering from an anterior retocele, a tear in the connective tissue between her vagina and rectum, a condition for

which Dr. Barron referred Ms. Genereux to a specialist: Dr. Chapin.

5. During his examination of February 22, 2008, Dr. Chapin confirmed a retocele originating high in Ms. Genereux' posterior vagina and prolapsed almost down to the hymen.

6. Dr. Chapin discussed the possible causes of the retocele with Ms. Genereux because it is an unusual condition for a woman of Ms. Genereux' age who lacks a medical history of childbirth injury or chronic constipation. Their discussion led Dr. Chapin to conclude that the cause of Ms. Genereux' retocele was the rape.

7. At the undersigned's request, Dr. Chapin prepared a report of his findings and faxed them, along with his medical records, to plaintiff's counsel on March 3, 2008. His medical records included his report to Dr. Barron and a copy of the radiograph report which had alerted Dr. Barron to the retocele. A copy of the facsimile is hereto annexed. The report and letter to Dr. Barron are misdated "2007" but the accompanying medical records indicate that Dr. Chapin first examined Ms. Genereux on February 22, 2008, and the radiograph was performed on February 14, 2008.

8. The plaintiff immediately hand delivered the faxed report and records to the defendant that day, as indicated in the defendants' motion.

9. The defendant's motion is premised upon the incorrect assumption that Dr. Chapin was hired as a plaintiff's testifying expert and was retained and identified late in the litigation.

10. To the contrary, Dr. Chapin was consulted as a treating physician at the request of another treating physician for a condition not suspected of being related to the rape. Immediately upon learning of the connection, the plaintiff disclosed his identity, records and report to the defense. There was no delay, no intent to mislead, and no misleading.

11. The defendants have been in possession of Dr. Chapin's report for more than one month, had not suggested a defense medical examination of Ms. Genereux to either the plaintiff or to the Court, had not sought a continuance to evaluate Dr. Chapin's report or Ms. Genereux' condition, and raised no question about the accuracy of the report.

12. The defendants' response to Dr. Chapin's report is consistent with the defendants' response to the plaintiffs' other medical, psychotherapeutic, vocational, and economic reports of damages. There have been no defense medical examinations of Ms. Genereux, no defense experts offered on damages, and no significant contest of the plaintiff's damages. The defendants have based their defense on liability issues; not on damages.

13. Accordingly, there is no prejudice to the defendants and no basis for excluding Dr. Chapin's testimony.

WHEREFORE, the plaintiff respectfully requests that this Court deny the defendants' motion *in limine*.

The Plaintiff,
By her Attorney,

Mark F. Itzkowitz

Digitally signed by Mark F. Itzkowitz
DN: CN = Mark F. Itzkowitz, C = US, O = Mark F. Itzkowitz, Esquire
Date: 2008.04.08 20:13:18 -04'00'

MARK F. ITZKOWITZ (BBO #248130)
85 Devonshire Street
Suite 1000
Boston, MA 02109-3504
(617) 227-1848
April 8, 2008

CERTIFICATE OF SERVICE

I, Mark F. Itzkowitz, counsel for the plaintiff, hereby certify that on this date, I made service of the within document by serving it electronically to registered ECF participants and/or by mailing/faxing/hand-delivering a copy of same to non-registered ECF participants as indicated on the Notice of Electronic Filing ("NEF"), upon the following counsel of record:

John B. Johnson, Esquire
Corrigan, Johnson & Tutor, P.A.
141 Tremont Street
Boston, MA 02111; and

Robert J. Brown, Esquire
Mendes & Mount, LLP
750 7th Avenue
New York, NY 10019-6829.

s/ Mark F. Itzkowitz
MARK F. ITZKOWITZ (BBO #248130)

Dated: April 8, 2008

Beth Israel Deaconess Medical Center

A teaching hospital of Harvard Medical School

David S. Chapin, M.D.
Department of Obstetrics & Gynecology

Director, Division of Gynecology

Assistant Professor, Obstetrics, Gynecology and Reproductive Biology

February 29, 2007

Mr. Mark F. Itzkowitz
85 Devonshire Street, Suite 1000
Boston, MA 02109-3504

Re: Kimberly Ann Genereux

Dear Mr. Itzkowitz,

I interviewed and examined Kimberly Genereux on February 22, 2008. She reported to me that since she was raped about five years ago she has suffered increasingly serious symptoms related to defecation. She is unable to completely empty her rectum without pushing in on an area of the vagina into which the rectum is prolapsed, a rectocele. Even when she feels she has emptied completely, she often soils her underwear shortly thereafter. A defogram performed February 14, 2008 showed an anterior rectocele causing incomplete rectal emptying.

My examination confirmed that indeed there is a rectocele originating high in the posterior vagina and prolapsed almost down to the hymen. This examination and a defogram indicate that the connective tissue between the vagina and the rectum has been torn.

The patient told me that she was assaulted from behind with one leg up on the toilet in a public restroom. The man's thrusting caused her to feel as if she were being ripped apart inside.

Rectoceles such as Ms. Genereux's are usually caused by childbirth injury or chronic constipation. Ms. Genereux has not experienced either of these. I must conclude then, to a reasonable degree of certainty that her injury was caused by the rape.

I have proposed to Ms. Genereux that at a time of convenience in the future we could perform a reparative operation called a posterior colporrhaphy. This procedure has a high likelihood of restoring her normal defecatory function. It would involve about one hour in the operating room and one or two nights in the hospital, as well as a six-week recovery period during which exercise and heavy lifting would be prohibited.

I would be happy to answer any further questions.

Sincerely,

David S. Chapin, MD
DSC:zs

330 Brookline Avenue
Boston, MA 02215

(617) 667-4316
fax (617) 667-4173
dchapin@caregroup.harvard.edu

Beth Israel Deaconess Medical Center

A teaching hospital of Harvard Medical School

David S. Chapin, M.D.
Department of Obstetrics & Gynecology

Director, Division of Gynecology

Assistant Professor, Obstetrics, Gynecology and Reproductive Biology

February 25, 2007

Rosaline Barron, MD
300 Mount Auburn Street, Suite 507
Cambridge, MA 02138

Re: Kimberly Genereux

Dear Dr. Baron,

Your patient Kimberly Genereux consulted me about her rectocele. She is a 54 year-old woman who has developed a rectocele subsequent to a sexual assault five years ago. She now experiences incomplete emptying of her rectum, fecal incontinence after apparently completing defecation, and she must push in the vagina to assist the defecation process. She has never had a vaginal delivery or experienced chronic constipation. Defogram performed at the Mount Auburn on February 14th showed an incompletely emptying rectocele. She has no urinary symptoms.

I examined her on February 22nd, and I indeed found a high rectocele. The most distal 3 cm of the rectovaginal septum appears to be intact, but above that the upper vaginal wall and the rectum prolapse all the way down to 1 cm above the hymen.

This is an unusual situation, but I do believe she sustained this high rectocele as a result of the sexual assault. I told the patient we could repair this with a defect-specific posterior colporrhaphy. It might be necessary for me to use surgical mesh. I believe the patient will be scheduling this surgery after her upcoming trial in April.

I appreciate the opportunity to participate in this patient's care.

Sincerely,

David S. Chapin, MD
DSC:zs

Cc: Ms. Kimberly Genereux

330 Brookline Avenue
Boston, MA 02215

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dchapin@caregroup.harvard.edu

BARD

Pelvic Organ Prolapse Evaluation

Exam representation based on the Pelvic Organ Prolapse-Quantification (POP-Q) System.

Exam Date: 2/22/2008

Uterus: Yes

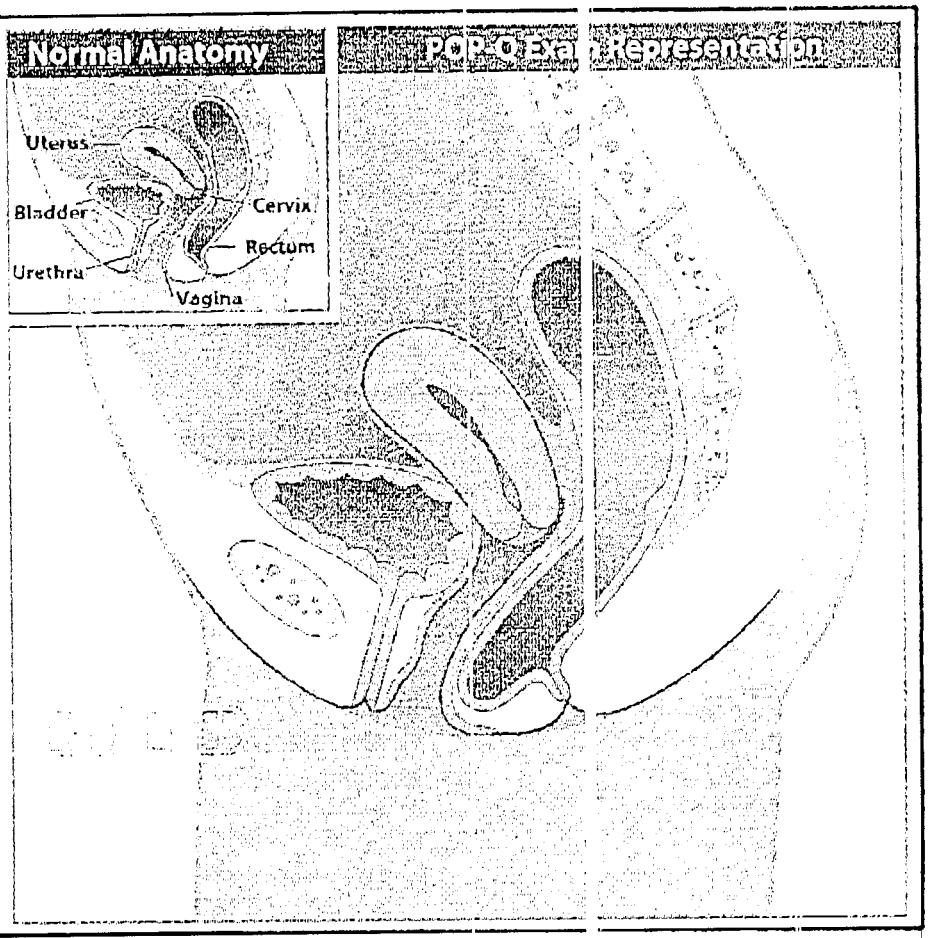
C:	-8
D:	-9
Aa:	-3
Ba:	-3
Ap:	-1
Bp:	-1
pb:	3
gh:	2.5
tvl:	10

Evaluation:

Stage 2

Leading Edge:

Posterior Wall



The above image is for educational purposes only and is not an exact representation of the patient's type and stage of pelvic organ prolapse.

For more information:

Professionals: http://www.bardurological.com/professional/overview.aspx?bUnitID=4

Patients: http://www.bardurological.com/patient/overview.aspx?bUnitID=4

Notes:

869 97 20
GENEREUX,KIMBERLY A.
12/31/1953 F Sch:CHRPIN,[
02/22/08
Time____.
Sign_____ 869 97 20

MOUNT AUBURN HOSPITAL RADIOLOGY
330 MOUNT AUBURN STREET CAMBRIDGE, MA 02138

NAME			SEX	ACCOUNT NUMBER
GENEREUX, KIMBERLY			F	53448940
ORDERING PHYSICIAN		PT. STATUS	LOCATION	MEDICAL RECORD NO.
Barron M.D., Rosaline F.		REG CLI	RAD	0000576109
ATTENDING PHYSICIAN	DATE OF BIRTH	AGE	DATE OF EXAM	RADIOLOGY NO.
Barron M.D., Rosaline F.	12/31/1953	54	02/14/2008	

Clinical History: PELVIC FLOOR PROBLEM DIFFICULTY EVACUATION

EXAM#	TYPE/EXAM	RESULT
001666036	RADFL/DEFECOGRAPHY	

RADIOLOGY REPORT

History: Difficulty with evacuation.

Report: The small bowel, vagina and rectum were opacified with barium.

At rest, the rectum and pelvic floor appear normal.

With the squeeze maneuver, there is normal contraction of the puborectalis muscle.

With the Valsalva maneuver, the patient remains continent.

When the patient evacuates, she develops a small anterior rectocele. At the conclusion of evacuation, the small anterior rectocele empties back into the rectum causing incomplete rectal emptying.

There is no enterocele.

Conclusion: When the patient evacuates, she develops a small anterior rectocele which empties back into the rectum at the conclusion of evacuation. This causes incomplete rectal emptying.

DD: 2/14/2008 12:27:37 PM

Report ID: 330442

Dictated: 02/14/08 1327
---- Electronic Signature on File ----
Signed By: MICHAEL J. SHORTSLEEVE, M.D.

Reported By: MICHAEL J. SHORTSLEEVE, M.D.

CC: Rosaline F. Barron M.D.

059 37 20
GENEREUX, KIMBERLY A.
12/31/1953 F Sch CHELPIN, D
02/22/08
Tim
Sign 059 37 20

Copy sent to pt

Pt Told
Rx Olmesartan
@ Fibr
But first better
consult

DAVID S. CHAPIN, MD

New Patient Consultation

Pg 1 of 4

069 97 20
GENEREUX, KIMBERLY A.
12/31/1953 F Sch CHAPIN, D
02/22/06
Time____
Sign__ __________ 069 97 20

REFERRED/CONSULTED BY: Merrille

PCP:

AGE: 54

REMARKS:

CHIEF COMPLAINT: Rectocele

HISTORY OF PRESENT ILLNESS: Repaired 5 yrs ago. [illegible] after. Bulky turn up. No movements. Never had diarrhea or chronic constipation. Defecogram 2/14 - rectocele [illegible]. No periods of [illegible]. Now pain [illegible] after defecating. Feels [illegible] bulge. Has to push in the bulge to help. No urine incontinence.

PAP: [illegible]

PAST HISTORY:

SURGICAL PROCEDURES: Appy in college + [illegible], vasectomy

MEDICAL ILLNESSES: Eczema, Hypersensitivity pneumonitis

OBSTETRICAL HISTORY: G0

GENERAL: – Vegetarian

MEDICATIONS: Effexor, Vioxx, Chondroitin [illegible]

ALLERGIES: dust.

SMOKING: 0

ALCOHOL: occ

DAVID S. CHAPIN, MD

NEW PATIENT CONSULTATION
PG 2 OF 4

REVIEW OF SYSTEMS

CONSTITUTIONAL: Weakly.

EYES: Neg.

ENT: Neg

CARDIOVASCULAR: - Neg

RESPIRATORY: Hyperventilate previously

GI: See PI - hx of nausea.

URINARY: Neg

BREAST:
LAST MAMMOGRAM:

SKIN

MUSCULOSKELETAL:

NEURO/PSYCHIATRIC:

ENDOCRINE:

HEMATOL/LYMPHATIC:

IMMUNOLOGIC:

MENSTRUAL:

PERIODS/ONSET: Stopped 5 yrs ago

FREQUENCY:

DURATION:

PAIN:

LMP: _____

FLOW:

PREMENSTRUAL SX:

INTERMENSTRUAL SX:

DISCHARGE:

SEXUAL ACTIVITY: ⊖

BIRTH CONTROL: NN

FAMILY HISTORY: M + lung ca? Smokes
F + MI.

SOCIAL HISTORY: Lives in Rockport
Works in an office. - on disability.

SAFE AT HOME? Yes.

DAVID S. CHAPIN, MD

NEW PATIENT CONSULTATION
PG 3 OF 4

063 97 20
GENEREUX, KIMBERLY A
12/31/1953 F Sch. CHAPIN, [illegible]
02/22/08
Time____
069 97 20
Sign ____________

PHYSICAL EXAMINATION:

WT 146 HT 5'8" BP 138/80 URINE ________

SKIN NL

THYROID, NECK NL

HEART NL [illegible]

RESPIRATORY Clear to P+A

EXTREMITIES NL

BREASTS NL

ABDOMEN NL

HERNIA NL

PELVIC EXAMINATION:

EXTERNAL GENITALIA: NL

URETHRA: NL

VAGINAL SUPPORT: [illegible]

VAGINA: NL

BLADDER: NL

CERVIX: NL

UTERUS: [illegible]

ADNEXA: NL – [illegible]

RECTAL: [illegible]

HEMOCCULT: [illegible]

DAVID S. CHAPIN, MD

NEW PATIENT CONSULTATION
PG 4 OF 4

DIAGNOSES:

Rotator - probable
traumatic -

TREATMENT PLAN(S)

Cortisone injection -
myofascial meds.

FOLLOW-UP: _____

SIGNED: _____

CONSULTATION TIME:

COMPLEXITY OF DECISION-MAKING:

Symptoms started after the age
No other etiologies exist.